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1 FRANCIS O. SCARPULLA (41059)  
CRAIG C. CORBITT (83251)  
2 MATTHEW R. SCHULTZ (220641)  
PAMELA E. WOODSIDE (226212)  
3 TRAVISS GALLOWAY (234678)  
ZELLE, HOFMANN, VOELBEL, MASON  
4 & GETTE LLP  
44 Montgomery Street, Suite 3400  
5 San Francisco, CA 94104  
Telephone: (415) 693-0700  
6 Facsimile: (415) 693-0770  
fscarpulla@zelle.com  
7 ccorbitt@zelle.com

8 *Attorneys for Plaintiffs*

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11  
12 G&C AUTO BODY, INC., on behalf of itself  
and all others similarly situated,

13 Plaintiff,

14 vs.

15 GUARDIAN INDUSTRIES CORP.;  
16 GUARDIAN FABRICATION INC.;  
GUARDIAN WALLED LAKE  
17 FABRICATION CORP.; GUARDIAN GLASS  
COMPANY; PILKINGTON GROUP  
18 LIMITED; PILKINGTON NORTH AMERICA  
INC.; PILKINGTON HOLDINGS INC;  
19 NIPPON SHEET GLASS CO.; COMPAGNIE  
DE SAINT-GOBAIN; SAINT-GOBAIN  
20 CORPORATION; CERTAINTEED  
CORPORATION; SAINT-GOBAIN GLASS  
21 CORPORATION; SAINT-GOBAIN GLASS  
EXPROVER NORTH AMERICA  
22 CORPORATION; ASAHI GLASS COMPANY  
LIMITED; AGC FLAT GLASS; AGC FLAT  
23 GLASS NORTH AMERICA; AGC FLAT  
GLASS EUROPE; AGC AMERICA, INC.;  
24 AGC INTEREDGE TECHNOLOGIES, INC.;  
AMA GLASS CORPORATION; PPG  
25 INDUSTRIES, INC.; PPG AUTO GLASS,  
LLC; PPG INDUSTRIES INTERNATIONAL  
26 INC.; JOHN DOES IX,

27 Defendants.  
28

E-filing

WDB

CASE NO  
CV 08

1990

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff G&C Auto Body, Inc. ("Plaintiff"), on behalf of itself and all others similarly  
2 situated, brings this action under the federal antitrust laws, Section 1 of the Sherman Antitrust Act of  
3 1890, 15 D.S.C. § 1 ("Sherman Act"), and Section 4 of the Clayton Antitrust Act of 1914, 15 U.S.C.  
4 § 15 ("Clayton Act"), against the above-captioned Defendants. Plaintiff makes the following  
5 allegations on information and belief, except as to those paragraphs that pertain to Plaintiff, which  
6 are based upon personal knowledge. Plaintiff's information and belief are based on, *inter alia*, the  
7 investigation made by its attorneys.

#### 8 NATURE OF CLAIM

9 1. This case arises from an international cartel among the world's leading manufacturers  
10 of Flat Glass (defined below) to fix, raise, maintain, and/or stabilize prices of Flat Glass in the  
11 worldwide Flat Glass market, including in the United States.

12 2. "Flat Glass," as used in this complaint, includes all unfabricated and fabricated  
13 glass products manufactured through the "float process," whether transparent, opaque, translucent,  
14 reinforced or otherwise, formed in a flat shape, used for cutting into window panes, or glass formed  
15 flat and subsequently bent or curved, used for fabrication into automobile windshields.

16 3. The "float process" is the process of manufacturing Flat Glass by passing molten  
17 glass from a melting furnace to a bath in which a continuous ribbon of molten glass floats on a liquid  
18 of greater density than the glass, normally composed of molten tin, where it is polished under  
19 controlled temperatures and subsequently fed into an annealing oven, where it is gradually cooled.  
20 The float process has replaced all other methods of producing Flat Glass in the United States, due to  
21 its ability to produce Flat Glass of uniform thickness with an absence of distortions. The float  
22 process also reduces fuel consumption and labor costs relative to other glass production methods.

23 4. Asahi, Guardian, NSG/Pilkington and Saint-Gobain (defined below) hold a combined  
24 80 percent market share in the European Flat Glass market, and Asahi, Guardian, PPG and  
25 NSG/Pilkington hold a combined estimated market share of 73 percent in the North American Flat  
26 Glass market.

#### 27 JURISDICTION AND VENUE

28 5. This action arises under Section 1 of the Sherman Act and Section 4 of the Clayton

1 Act.

2 6. Jurisdiction of this Court is founded on Section 4 of the Clayton Act, 15 U.S.C. § 15,  
3 for violations of Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 4 of the Clayton Act, 15  
4 U.S.C. § 15, and 28 U.S.C. §§ 1331, 1337.

5 7. Venue as to Defendants (set forth below) is proper in this Court pursuant to Sections  
6 15(a) and 22 of the Shennan Act, and 28 U.S.C. § 1391(b), (c), because Defendants are found and  
7 transact business in the geographic region covered by this judicial district and/or the claims arose at  
8 least in part in the geographic region covered by this Court. Defendants regularly and continuously  
9 conduct business in interstate and foreign commerce between and among the several United States  
10 and foreign countries. The interstate trade and commerce described herein has been carried out, in  
11 part, within the Northern District of California.

12 **PARTIES**

13 **A. Plaintiff**

14 8. Plaintiff G&C Auto Body, Inc. is located at 251 Bellevue Avenue, Santa Rosa, CA  
15 95407. Plaintiff purchased Flat Glass from one or more of the Defendants during the Class Period  
16 (defined herein), and was damaged as a result of Defendants' unlawful conduct.

17 **B. Defendants**

18 9. Defendant Guardian Industries Corp. ("Guardian") is a privately held Delaware  
19 corporation with its world headquarters located at 2300 Hannon Road, Auburn Hills, Michigan  
20 48326-1714. Guardian is principally engaged in the manufacture and fabrication of Flat Glass, and  
21 ranks as one of America's largest glass and glass products manufacturers, accounting for between  
22 seven percent and eight percent of the US. glass market. Between January 1, 2001 and the present  
23 (the "Class Period"), Guardian, directly or through its subsidiaries or affiliates, manufactured and  
24 sold Flat Glass to customers throughout the United States.

25 10. In 2005, Guardian earned \$5 billion in revenue and employed 19,000 employees.  
26 Approximately 40 percent of its revenue (\$1.95 billion) is derived from U.S. glass-related sales.  
27 Guardian is a major supplier of glass products, primarily producing float glass, fabricated glass, and  
28 fiberglass products.

1           11. Defendant Guardian Fabrication Inc., a Delaware corporation, is a subsidiary of  
2 Guardian, with its principal place of business at 2300 Harmon Road, Auburn Hills, Michigan 48326-  
3 1714. Guardian Fabrication Inc. manufactures and markets flat architectural and automotive glass.  
4 During the Class Period, Guardian Fabrication Inc., directly or through its subsidiaries or affiliates,  
5 manufactured and sold Flat Glass to customers in the United States.

6           12. Defendant Guardian Walled Lake Fabrication Corp., a Michigan corporation, is a  
7 Guardian subsidiary with its principal place of business at 3160 Ridgeway Ct., Walled Lake,  
8 Michigan 48390-1670. Guardian Walled Lake Fabrication Corp. manufactures and markets  
9 tempered Flat Glass products. During the Class Period, Guardian Walled Lake Fabrication Corp.,  
10 directly or through its subsidiaries or affiliates, manufactured and sold Flat Glass to customers in the  
11 United States.

12           13. Defendant Guardian Glass Company, an Ohio corporation with its principal place of  
13 business at 2300 Harmon Road, Auburn Hills, Michigan 48326-1714, is also a Guardian subsidiary.  
14 Guardian Glass Company produces architectural glass, auto glass replacement products, and a  
15 variety of glass for use in residential applications such as windows, mirrors, and patterned specialty  
16 glass. During the Class Period, Guardian Glass Company, directly or through its subsidiaries or  
17 affiliates, manufactured and sold Flat Glass to customers in the United States.

18           14. Defendants identified in paragraphs 9 through 13 are collectively referred to herein as  
19 “Guardian.”

20           15. Defendant Pilkington Group Limited (“Pilkington”) is a UK corporation with its  
21 principal place of business at Prescott Road, St. Helens, Merseyside, W AIO 3TT, United Kingdom.  
22 During the Class Period, Pilkington Group Limited was the largest glass manufacturer in the United  
23 Kingdom and controlled almost one quarter of the market. During the Class Period, Pilkington  
24 Group Limited, directly or through its subsidiaries or affiliates, manufactured and sold Flat Glass to  
25 customers in the United States.

26           16. Defendant Pilkington North America Inc. (“Pilkington North America”) is a  
27 subsidiary of the Pilkington Group, incorporated in Delaware with its principal place of business at  
28 811 Madison Avenue, Toledo, Ohio 43604-5684. Pilkington North America manufactures and

1 markets flat and safety glass for the building and automotive markets and is one of the largest  
2 producers of float glass in the United States. During the Class Period, Pilkington North America,  
3 directly or through its subsidiaries or affiliates, manufactured and sold Flat Glass to customers in the  
4 United States.

5 17. Defendant Pilkington Holdings Inc. ("Pilkington Holdings") is a Delaware  
6 corporation with its principal place of business at 811 Madison Ave, Toledo, Ohio 43604-5684.  
7 Pilkington Holdings is the wholly-owned subsidiary of Pilkington Overseas Holdings Ltd.  
8 Pilkington Holdings holds Pilkington's United States-based assets. During the Class Period,  
9 Pilkington Holdings, directly or through its subsidiaries or affiliates, manufactured and sold Flat  
10 Glass to customers in the United States.

11 18. Defendant Nippon Sheet Glass Co. ("NSG") is one of the world's largest glass  
12 companies, second only to Asahi Glass Co. NSG had annual sales of approximately \$7.6 billion in  
13 2006. It is incorporated in Japan and headquartered in Tokyo, with its principal place of  
14 business at 2-1-7 Kaigan, Minato-ku, Tokyo, 105-8552, Japan. During the Class Period, NSG,  
15 directly or through its subsidiaries or affiliates, manufactured and sold Flat Glass to customers in  
16 the United States. Pilkington was acquired by NSG on June 16, 2006.

17 19. Defendants identified in paragraphs 15 through 18 are collectively referred to  
18 herein as "NSG/Pilkington."

19 20. Defendant Compagnie de Saint-Gobain ("Saint-Gobain") is a French corporation,  
20 founded in 1665 in Paris and headquartered at La Defense, Les Miroirs 18, avenue d' Alsace  
21 92400 Courbevoie, France. Originally a mirror manufacturer, it now also produces a variety of  
22 construction and high-performance materials. Saint-Gobain accounts for between 12 percent and 15  
23 percent of the U.S. glass market. It is one of the largest world glass manufacturers, operating in over  
24 54 countries, with more than 1,000 subsidiaries. Flat Glass sales were an estimated \$5.4 billion in  
25 2005 and an estimated \$6.6 billion in 2006 (representing 12 percent of sales). During the Class  
26 Period, Saint-Gobain, directly or through its subsidiaries or affiliates, manufactured and sold Flat  
27 Glass to customers in the United States.

28 21. Defendant Saint-Gobain Corporation ("Saint-Gobain Corp.") is a U.S. holding

1 company incorporated in Pennsylvania with its principal place of business located at 750 East  
2 Swedesford Road, P.O. Box 860, Valley Forge, Pennsylvania 19482-0101. Saint-Gobain Corp.'s  
3 businesses in the United States and Canada now account for 16 percent of the company's worldwide  
4 sales and 11 percent of its employees. The Flat Glass business sector of Saint-Gobain Corp.  
5 represents about one percent of its sales in the United States and Canada. During the Class Period,  
6 Saint Gobain Corp., directly or through its subsidiaries or affiliates, manufactured and sold Flat  
7 Glass to customers in the United States.

8       22. Defendant CertainTeed Corporation ("CertainTeed") is a U.S. subsidiary of Saint-  
9 Gobain. It is a Delaware corporation, headquartered at 750 East Swedesford Road, P.O. Box 860,  
10 Valley Forge, Pennsylvania 19482-0101. During the Class Period, CertainTeed, directly or through  
11 its subsidiaries or affiliates, manufactured and sold Flat Glass to customers in the United States.

12       23. Defendant Saint-Gobain Glass Corporation, a subsidiary of Saint-Gobain, is a U.S.  
13 holding company, incorporated in Delaware with its principal place of business at 750 East  
14 Swedesford Road, P.O. Box 860, Valley Forge, Pennsylvania 19482-0101. Its 2006 U.S. sales were  
15 41.8 million. During the Class Period, Saint-Gobain Glass Corporation, directly or through its  
16 subsidiaries or affiliates, manufactured and sold Flat Glass to customers in the United States.

17       24. Defendant Saint-Gobain Glass Exprover North America Corporation is a Saint-  
18 Gobain subsidiary, incorporated in Delaware with its principal place of business at 7655 E. Gelding  
19 Drive, Suite B-2, Scottsdale, Arizona 85260. During the Class Period, Saint-Gobain Glass Exprover  
20 North America Corporation, directly or through its subsidiaries or affiliates, manufactured and sold  
21 Flat Glass to customers in the United States.

22       25. Defendants identified in paragraphs 20 through 24 are collectively referred to herein  
23 as "Saint-Gobain."

24       26. Defendant Asahi Glass Company Limited ("Asahi") is incorporated under the laws of  
25 Japan and headquartered at 1-12-1, Yurakucho, Chiyoda-ku, Tokyo 100-8405, Japan. It is one of the  
26 core Mitsubishi companies in the Mitsubishi Group. Asahi is the world's number one maker of Flat  
27 Glass and claims 15 percent of the world Flat Glass market. Asahi also accounts for between five  
28 percent and seven percent of the U.S. glass market. In 2005, Asahi derived \$13 billion in revenue.



1 During the Class Period, Asahi, directly or through its subsidiaries or affiliates, manufactured and  
2 sold Flat Glass to customers in the United States.

3 27. Defendant AGC Flat Glass covers all the Flat Glass operations of the Asahi's AGC  
4 Group, and is the world's leader in Flat Glass manufacturing. AGC Flat Glass is incorporated in  
5 Belgium and headquartered at 166 Chaussee de la Hulpe, 1170 Brussels, Belgium. During the Class  
6 Period, AGC Flat Glass, directly or through its subsidiaries or affiliates, manufactured and sold Flat  
7 Glass to customers in the United States.

8 28. Defendant AGC Flat Glass North America is incorporated in Delaware and  
9 headquartered at 11175 Cicero Drive, Alpharetta, Georgia 30022-1166. Previously AFG Industries  
10 Inc., AGC Flat Glass North America is a subsidiary of Asahi. It is the largest supplier to the  
11 construction and specialty glass markets, and the second-largest glass manufacturing company in  
12 North America. During the Class Period, AGC Flat Glass North America, directly or through its  
13 subsidiaries or affiliates, manufactured and sold Flat Glass to customers in the United States.

14 29. Defendant AGC Flat Glass Europe, formerly known as Glaverbel S.A., is also part of  
15 the worldwide Asahi group. It is incorporated in Belgium and headquartered in Brussels, Belgium.  
16 AGC Flat Glass Europe is a leading global glass manufacturer, with industrial locations across  
17 Europe. During the Class Period, AGC Flat Glass Europe, directly or through its subsidiaries or  
18 affiliates, manufactured and sold Flat Glass to customers in the United States.

19 30. Defendant AGC America, Inc. ("AGC America"), previously known as Asahi Glass  
20 America, Inc., is an Asahi subsidiary and Flat Glass manufacturer, incorporated in Delaware with its  
21 principal place of business at 2201 Water Ridge Parkway, Suite 400, Charlotte, North Carolina  
22 28217. During the Class Period, AGC America, directly or through its subsidiaries or affiliates,  
23 manufactured and sold Flat Glass to customers in the United States.

24 31. Defendant AGC InterEdge Technologies, Inc. (formerly InterEdge Technologies) is a  
25 wholly-owned subsidiary of AGC Flat Glass. It is incorporated in California and headquartered at 85  
26 Liberty Ship Way, Suite 110B Sausalito, CA 94965. During the Class Period, AGC InterEdge  
27 Technologies, Inc., directly or through its subsidiaries or affiliates, manufactured and sold Flat Glass  
28 to customers in the United States.

32. Defendant AMA Glass Corporation (“AMA”) is an importer/exporter of architectural glass products incorporated in Tennessee and headquartered at 1400 Lincoln Street, Kingsport, Tennessee 37660-5174. AMA is the sole importer of Asahi commercial glass into North America, and is the largest importer of AGC Flat Glass Europe’s glass. During the Class Period, AMA, directly or through its subsidiaries or affiliates, manufactured and sold Flat Glass to customers in the United States.

33. Defendants identified in paragraphs 26 through 32 are collectively referred to herein as “Asahi.”

34. Defendant PPG Industries, Inc. is a Pennsylvania corporation with its headquarters located at One PPG Place, Pittsburgh, PA 15272. With facilities in, over 60 countries, in 2007, PPG had sales in excess \$11.2 billion. PPG is the largest fiat glass manufacturer in North America, supplying glass for both commercial and residential markets, industrial and specialty uses, and automotive, aircraft and other transportation applications. During the Class Period PPG Industries, Inc., directly or through its subsidiaries or affiliates, manufactured and sold Flat Glass to customers in the United States.

35. Defendant PPG Auto Glass, LLC is a consolidated affiliate of PPG Industries, Inc. It is a Delaware corporation with its headquarters located at One PPG Place, Pittsburgh, PA 15272. During the Class Period, PPG Auto Glass, LLC, directly or through its subsidiaries or affiliates, manufactured and sold Flat Glass to customers in the United States.

36. Defendant PPG Industries International Inc. is a Delaware corporation with its headquarters at IMM Scar Paries La Defense, 1 Avenue du Genem1 de Gaulle, Puteaux, Hauts de Seine, France 92800. During the Class Period, PPG Industries International, Inc., directly or through its subsidiaries or affiliates, manufactured and sold Flat Glass to customers in the United States.

37. Defendants identified in paragraphs 34 through 36 are collectively referred to herein as “PPG.”

**C. Co-Conspirators**

38. Various other individual persons and/or entities, the identities of which are presently unknown to Plaintiff, have participated as co-conspirators with one or more of the Defendants, and



1 have engaged in other acts in furtherance of the anticompetitive conduct and antitrust violations  
2 alleged herein. Collectively, these individuals and entities shall be referred to herein as the "John  
3 Doe Defendants I-X." The acts charged in this Complaint have been done by the John Doe  
4 defendants I-X and their co-conspirators, or were authorized, ordered or done by their respective  
5 officers, agents, employees or representatives.

6 **CLASS ACTION ALLEGATIONS**

7 39. Plaintiff brings this action as a class action under Rules 23(a), 23(b)(2) and 23(b)(3)  
8 of the Federal Rules of Civil Procedure, on behalf of itself and all others similarly situated. The  
9 "Class" is defined as:

10 All persons or entities who purchased Flat Glass in the United States  
11 directly from the Defendants or their co-conspirators (the "Class"), at  
12 any time from at least January 1, 2004 through the date of filing of this  
13 complaint (the "Class Period"). Excluded from the Class are  
Defendants, any subsidiaries or affiliates of Defendants, and any of  
Defendants' co-conspirators, whether or not named as a Defendant in  
this Complaint.

14 40. The Class is so numerous that joinder of all members is impracticable. Due to the  
15 nature of the trade of the commerce involved, Plaintiff believes that the members of the Class are  
16 geographically dispersed throughout the world, including throughout the United States, and that  
17 joinder of all Class members would be impracticable. While the exact number of Class members is  
18 unknown to Plaintiff at this time, Plaintiff believes that there are, at least, thousands of members of  
19 the Class and that their identities can be readily determined from Defendants' and their co-  
20 conspirators' books and records.

21 41. Plaintiff's claims are typical of the claims of the other members of the Class. Plaintiff  
22 and members of the Class purchased Flat Glass at artificially maintained, non-competitive prices  
23 established by the actions of Defendants and their unnamed co-conspirators in connection with the  
24 restraint of trade alleged herein. Plaintiff and members of the Class have all sustained damage in that  
25 they paid inflated prices for the Flat Glass products at issue due to Defendants' conduct in violation  
26 of federal law as complained of herein.

27 42. Plaintiff will fairly and adequately protect the interests of the members of the Class  
28 and has retained counsel competent and experienced in class action and antitrust litigation.

1           43. Common questions of law and fact exist as to all members of the Class which  
2 predominate over any questions affecting solely individual members of the Class. Among the  
3 questions of law and fact common to the Class are:

- 4           a. Whether Defendants conspired, contracted or combined with others, for the  
5           purpose of and with the effect of raising, fixing, maintaining, pegging, or  
6           stabilizing the price of Flat Glass which was purchased by the Class;
- 7           b. Whether Defendants engaged in a combination or conspiracy among  
8           themselves to unlawfully implement energy surcharges in the United States;
- 9           c. Whether Defendants undertook actions to conceal the unlawful conspiracies,  
10          contracts or combinations described herein;
- 11          d. Whether Defendants' conduct violated the relevant federal antitrust laws and  
12          caused injury to the business and property of Plaintiff and the Class and, if so,  
13          the proper measure of damages;
- 14          e. The effect of Defendants' conspiracy on the energy surcharge prices, and  
15          ultimate prices, charged for Flat Glass during the Class Period; and
- 16          f. The appropriate measure of damages sustained by Plaintiff and other members  
17          of the Class.

18          44. A class action is superior to other available methods for the fair and efficient  
19 adjudication of this controversy since joinder of all Class members is impracticable. The prosecution  
20 of separate actions by individual members of the Class would impose heavy burdens upon the courts  
21 and Defendants, and would create a risk of inconsistent or varying adjudications of the questions of  
22 law and fact common to the Class. A class action, on the other hand, would achieve substantial  
23 economies of time, effort and expense, and would assure uniformity of decision as to persons  
24 similarly situated without sacrificing procedural fairness or bringing about other undesirable results.

25          45. The interest of members of the Class in individually controlling the prosecution of  
26 separate actions is theoretical rather than practical. The Class has a high degree of cohesion, and  
27 prosecution of the action through representatives would be unobjectionable. The amounts at stake for  
28 class members, while substantial in the aggregate, are not great enough individually to enable them

1 to maintain separate suits against Defendants. Plaintiff does not anticipate any difficulty in the  
2 management of this action as a class action.

3 **INTERSTATE TRADE AND COMMERCE**

4 46. During the Class Period, Defendants were dominant participants in the worldwide  
5 Flat Glass industry, including the United States. Throughout the Class Period, there has been a  
6 continuous and uninterrupted flow of transactions and shipments in Flat Glass in interstate and  
7 international commerce throughout the United States and the world.

8 47. The unlawful activities of Defendants and the unnamed co-conspirators have been  
9 within the flow of, and have had a direct, substantial, and reasonably foreseeable effect on interstate  
10 and international commerce.

11 **FACTS**

12 **The Flat Glass Market**

13 48. Defendants are the largest producers of Flat Glass in the world. Just five Defendants  
14 PPG, NSG/Pilkington, Saint-Gobain, Asahi and Guardian produce over 70 percent of the world's  
15 high-quality float glass. Much of the world's lower quality float and sheet glass production is being  
16 replaced by high quality float.

17 49. The global Flat Glass market in 2005 was approximately 41 million tons, with a value  
18 of approximately \$19 billion. Of the 41 million tons, 25 million tons were high quality float glass, 3  
19 million tons were sheet glass production, 2 million tons were rolled glass, and the remaining 11  
20 million tons were lower quality float glass, which is produced mainly in China.

21 50. A proportion of the high quality float glass, and some of the rolled glass, is further  
22 processed by laminating, toughening, coating and silvering, for use typically in insulating glass  
23 units or automotive glazings. At this level, the market has a value of approximately \$56 billion.

24 51. According to the European Union, Asahi, Guardian, NSG/Pilkington and Saint-  
25 Gobain hold a combined 80 percent market share in the European Flat Glass market.

26 52. North America, dominated by the United States, is a mature market with annual Flat  
27 Glass market growth estimated at four percent during the next three years. The construction market  
28 accounts for between 55% and 60% of total demand, but will almost certainly decline with the

1 slowdown in U.S. residential construction activity. Fry Consultants Inc., *Global Flat Glass Market*  
2 *Overview, A Presentation for the ANSAC Global Distributor Meeting*, Sept. 19, 2006, at p.14,  
3 [http://www.fryconsultants.com/GLOBAL\\_FLAT\\_GLASS\\_MARKET\\_OVER](http://www.fryconsultants.com/GLOBAL_FLAT_GLASS_MARKET_OVERVIEW.ppt#268,14,FLAT GLASS MARKET: NORTH AMERICA PROFILE)  
4 [VIEW.ppt#268,14,FLAT GLASS MARKET: NORTH AMERICA PROFILE](http://www.fryconsultants.com/GLOBAL_FLAT_GLASS_MARKET_OVERVIEW.ppt#268,14,FLAT GLASS MARKET: NORTH AMERICA PROFILE).

5 53. Four manufacturers represent roughly three-quarters of capacity in the North  
6 American Flat Glass market. Defendants PPG, Asahi, Guardian, and NSG/Pilkington comprise these  
7 four companies. Defendant PPG's market share is estimated at 20 percent, Defendant Asahi's market  
8 share is estimated at 20 percent, Defendant Guardian's market share is estimated at 19 percent, and  
9 Defendant NSG/Pilkington's market share is estimated at 14 percent. *Id.*

10 54. The U.S. Flat Glass manufacturing industry's revenue in 2006 was approximately  
11 \$3.7 billion with a 35.68 percent gross profit of \$1.32 billion.

12 55. The Flat Glass manufacturing industry total revenue is estimated to have generated  
13 growth averaging 3.4 percent per annum over the five years to 2007, which is underpinned by  
14 cyclical growth in the housing market during the mid-2000s, and recent growth in commercial  
15 building activity.

16 56. The demand for Flat Glass stems largely from the housing and nonresidential building  
17 markets and the automotive assembly and repair market. Flat Glass is processed for a variety of uses  
18 in the building and automotive industries, including: windows; glass wall panels; glass bricks and  
19 blocks; doors and shower screens; windscreens; and mirrors. The key factors driving demand in  
20 these industries are prevailing interest rates, the pace of general economic growth, growth in  
21 household income and employment, growth in company profitability, and current and expected  
22 property values.

23 57. Exports of Flat Glass products grew by an average 6.5 percent per annum over five  
24 years to 2006 and are estimated to have remained stable in 2007.

25 **The Flat Glass Industry Is Conducive To Collusion**

26 58. Flat Glass is a commodity product that is uniform. It does not vary materially  
27 depending upon manufacturer. The Flat Glass manufactured by any Defendant is fungible with any  
28 other Defendant's flat Glass.



1           67.    The North American counterpart to GBPVP is the Flat Glass Manufacturing Division  
2 of the Glass Association of North America (“GANA “). GANA’s Flat Glass Manufacturing  
3 Division was established in 2003.

4           68.    GANA’s stated mission is to “provide a forum for exchanging information and ideas,  
5 for reaching consensus and presenting a unified voice on matters affecting the glass industry.”  
6 GANA proclaims that it provides a forum to “put members in regular contact with their peers” and  
7 that it strives to provide its members “networking opportunities.”

8           69.    The Flat Glass Manufacturing Division of GANA has as full members the primary  
9 flat glass manufacturers in North America - including AFG (Asahi), Guardian, PPG, and Pilkington -  
10 who met regularly during the Class Period under the auspices of the association.

11                           **Flat Glass Price Increases in the United States**

12           70.    Commencing on or around September of 2000, Defendants conspired, contracted or  
13 combined amongst themselves and with others, for the purpose of and with the effect of raising,  
14 fixing, pegging, maintaining or stabilizing the price of Flat Glass and other commercial conditions  
15 for deliveries of Flat Glass purchased by the Class. Defendants implemented this conspiracy by,  
16 among other activities, collusively imposing illegal energy surcharges based on publicly reported  
17 energy commodity prices, such as those for Brent crude.

18           71.    In late 2000, certain Defendants first implemented an energy surcharge in the amount  
19 of \$300/per truckload. Shortly thereafter, Defendants increased this energy surcharge to \$500/per  
20 truckload.

21           72.    By January 1, 2001, defendants raised the energy surcharge to \$500 per truckload of  
22 raw glass. This surcharge was applied identically by all defendants regardless of the size or weight  
23 of the glass being shipped or picked up at the plant.

24           73.    At some point in 2001, as a result of a decrease in natural gas prices, the energy  
25 surcharge was no longer being imposed. After attending meetings of GANA, all defendants re-  
26 implemented energy surcharges, effective in June 2002, despite continued low natural gas pricing.  
27 During the 2002-2003 time period, defendants also implemented price increases and a series of plant  
28 and line closures to cut back on excess capacity that existed in the construction flat glass industry at



1 that time. Despite these closures, capacity utilization was in the low to mid 80% range throughout  
2 this period.

3 74. Over the following years, Defendants unlawfully agreed to modify their energy  
4 surcharges based on a common formula. This formula based the price of the energy surcharge on the  
5 price of a barrel of Brent crude oil sold at London's International Petroleum Exchange (IPE).

6 75. Defendants implemented and adjusted these energy surcharges at the same time and  
7 in the same amounts, without regard to their actual energy costs. In fact, many of the Defendants  
8 effectively insulated themselves from rising energy costs by entering into long term contracts for the  
9 supply of natural gas.

10 76. Defendants at times made public statements attempting to explain the various fees  
11 and surcharges being implemented. For example, On November 3, 2004, Stuart Chambers, Chief  
12 Executive of Pilkington, explained during a telephone interview that the surcharge is based on rising  
13 gas and electricity costs. He noted that "[w]e are not alone, other European glassmakers have  
14 followed our lead" in regard to implementing the new fees to its customers.

15 77. By the beginning of 2005, as a result of the earlier closures, capacity utilization had  
16 risen to 90%. However, as a result of falling natural gas prices, in March 2005 defendants were  
17 forced to lower their energy surcharges by \$100 to \$800 per truckload. In order to recoup this  
18 income, defendants met through GANA and, within one month of this reduction they announced the  
19 imposition of a \$100 diesel fuel surcharge which was to be adjusted based on the twelve week  
20 average price of diesel fuel published by the Department of Energy.

21 78. When customers in the United States voiced complaints to Flat Glass manufacturers  
22 about the energy surcharge, Defendants rescinded the surcharge and implemented a uniform three  
23 percent price increase. Relief on Fuel Surcharge; glass prices rise, Glass Magazine, May 2005,  
24 <http://www.glassmagazine.net/archivednews.php?id=739>. For example, Defendant Guardian  
25 announced that the company would not have a diesel-fuel surcharge in the United States and then  
26 unveiled a three percent price increase on April 27, 2005. *Id.*

27 79. AFG Industries, now Defendant AGC Flat Glass North America, followed Defendant  
28 Guardian, announcing its three percent price increase on April 29, 2005 for all clear, tint, tempered

1 and coated products. AFG Industries' letter to its United States customers stated that "continuing  
2 cost pressures across the board exceeds our ability to meet your requirements without increasing  
3 prices." *Id.*

4 80. Frederick E. Wallin, AFG Vice President of Marketing, stated in an interview that  
5 medical insurance, fuel surcharges from trucking companies and natural gas numbered among the  
6 company's inflationary budget items. Wallin also stated that fabricators didn't like the diesel-fuel  
7 surcharge because it was confusing and difficult to implement or pass along to their customers. *Id.*

8 81. Defendant Pilkington North America announced a \$100 diesel-fuel surcharge on  
9 April 22, 2005 and rescinded it on May 5, 2005. Instead, Pilkington North America implemented a  
10 three percent price increase for all products that became effective May 16, 2005. *Id.*

11 82. In a letter to customers announcing the price increases, Stephen E. Weidner,  
12 Pilkington North America Vice President of Sales and Marketing, wrote: "We heard and understand  
13 the issues you raised regarding the diesel surcharge and, in response, are delaying implementation.  
14 Diesel costs have been volatile and are likely to continue that way into the future." The letter  
15 continued: "Unfortunately, the cost increases are real and we cannot continue to absorb them,"  
16 Weidner wrote. "Consequently, there will be a 3 percent price increase for all products effective  
17 May 16." *Id.*

18 83. These and other price increases by Flat Glass manufacturers in the United States  
19 during the Class Period were made pursuant to the unlawful price fixing conspiracy alleged herein.

#### 20 European Investigation

21 84. Defendants are among the largest producers of Flat Glass in the world.

22 85. During the Class Period, Defendants jointly participated in meetings in restaurants  
23 and hotels during which they discussed and agreed to the level and timing of price increases, energy  
24 surcharges, target prices, minimum prices, other commercial conditions for deliveries of Flat Glass,  
25 and exchanged other sensitive commercial information.

26 86. On February 24, 2005, the European Commission ("EC") announced that, on  
27 February 22 and February 23, 2005, it had raided the offices of Flat Glass manufacturers, seeking  
28 evidence of a price-fixing cartel in the Flat Glass industry. The EC issued a statement in which it

1 announced that it “ha[d] reason to believe that the manufacturers concerned may have (amongst  
2 other things) coordinated price-increases and agreed on the introduction of a so called ‘energy  
3 surcharge’ in the area of flat glass.” The EC officials were accompanied by their counterparts from  
4 the relevant national competition authorities.

5 87. Defendant Pilkington confirmed on February 24, 2005 that EC officials raided a  
6 number of its company locations in Europe.

7 88. Defendant Saint-Gobain confirmed on February 24, 2005 that EC officials raided two  
8 of its European locations in connection with the Commission’s investigation into the Flat Glass  
9 division’s compliance with competition law rules.

10 89. Defendant Asahi confirmed on February 25, 2005 that EC officials had raided the  
11 offices of its Belgian subsidiaries, AGC Automotive Europe S.A. and Glaverbel S.A., recently  
12 renamed AGC Flat Glass Europe.

13 90. On March 14, 2007, the EC confirmed that it sent a Statement of Objections, which  
14 are formal written allegations of unlawful anticompetitive conduct, to the participants in a cartel for  
15 Flat Glass.

16 91. Defendant Asahi confirmed on March 14, 2007 that its European subsidiary,  
17 Glaverbel S.A., received a Statement of Objections on March 13, 2007 from the EC with respect to  
18 anticompetitive behavior in the Flat Glass industry. Asahi stated that Glaverbel S.A. would examine  
19 the EC’s preliminary findings and respond in due course.

20 92. Defendant NSG/Pilkington confirmed on March 14, 2007 that it also received a  
21 Statement of Objections from the EC relating to violations of competition rules by a number of glass  
22 manufacturers. NSG/Pilkington announced that it would study the Statement of Objections in detail  
23 and prepare its response.

24 93. Defendant Saint-Gobain confirmed on March 14 ,2007, that it had received a  
25 Statement of Objections from the EC in connection with an investigation of competitive practices in  
26 the Flat Glass industry.

27 94. On November 28, 2007, the EC announced in a press release that it had imposed  
28 fines, totaling € 486.9 million (\$723 million), on Defendants Guardian, Saint-Gobain,

1 NSG/Pilkington, and Asahi for their participation in a cartel in the Flat Glass market, in which they  
2 coordinated price increases, fixed minimum prices and other commercial conditions for deliveries of  
3 Flat Glass, and exchanged other commercially important and confidential information. The EC  
4 found these Defendants' activities to violate the bans on cartels and restrictive business practices  
5 contained in the EC Treaty and the EEA Agreement (Article 81 of the EC Treaty and Article 53 of  
6 the EEA Agreement). Competition Commissioner Neelie Kroes stated that "[t]he Commission will  
7 not tolerate companies cheating consumers and business customers by fixing prices and depriving  
8 them of the benefits of the Single Market."

9 95. Specifically, Defendant Asahi was fined € 65 million (\$96.7 million), after  
10 substantially cooperating under the EC's Leniency Program. Additionally, Defendant Guardian was  
11 fined € 148 million (\$220 million), Defendant NSG/Pilkington was fined € 140 million (\$208  
12 million), and Defendant Saint-Gobain was fined € 133.9 million (\$199.2 million). According to The  
13 Guardian, the total fine was the fifth largest ever imposed by the Commission for anti competitive  
14 behavior. Angela Balakrishnan, *EU fines makers of window glass record €487m for fixing prices*,  
15 The Guardian, <http://www.guardian.co.uk/business/2007/nov/29/europeanunion.europeanunion>

16 96. The press release announced that the EC started its Flat Glass investigation on its own  
17 initiative on the basis of market information provided by several Member States' National  
18 Competition Authorities. The press release further stated that surprise inspections were carried out in  
19 February and March 2005 at the premises of Defendant Asahi's and Defendant Guardian's  
20 European subsidiaries, as well as at the premises of Defendant Pilkington, Defendant Saint-Gobain,  
21 and the  
22 European Association of Flat Glass Producers. In between the two rounds of inspections, Asahi and  
23 its European subsidiary, Glaverbel (now AGC Flat Glass Europe), made an application under the  
24 EC's leniency laws. Both Defendants cooperated with the EC and provided additional evidence of  
25 unlawful cartel behavior.

26 97. The EC investigation revealed that between 2004 and 2005, Defendants Asahi,  
27 Guardian, Pilkington and Saint-Gobain managed to raise or otherwise stabilize Flat Glass prices  
28 through a series of hotel and restaurant meetings, during which they discussed and agreed to the

1 level and timing of price increases, target prices, minimum prices and/or exchanged sensitive  
2 commercial information.

3 98. During a November 28, 2007 press conference in Brussels, Neelie Kroes,  
4 Competition Commissioner, stated: "The companies involved knew all too well that what they were  
5 doing was illegal. They thought that they would not be found out. They thought that the increased  
6 prices that they agreed were worth the risk. They were wrong."

7 99. The EC press release stated that the cartel concerned Flat Glass used to make double-  
8 glazing windows, glass doors, fire-resistant glass, and mirrors.

9 100. Commissioner Kroes additionally said during the press conference: "The companies  
10 profited from selling flat glass at artificially inflated prices. The direct victims were the buyers of the  
11 Flat Glass, companies who made products such as double-glazing and safety glass. "

12 101. NSG confirmed on November 28, 2007 that a fine had been levied against Pilkington,  
13 one of its subsidiaries.

14 102. Defendant Asahi confirmed on November 28, 2007 that its European subsidiary,  
15 AGC Flat Glass Europe SA (formerly Glaverbel SA), and Asahi had been fined 65 million euros by  
16 the EC. Asahi further stated that both companies replied to the Statement of Objections concerning  
17 Flat Glass on May 14, 2007 and had cooperated with the Commission during the investigation.

18 103. According to an Associated Press article, Defendant Guardian acknowledged the fine  
19 on November 28, 2007.

20 104. On January 15, 2008, Asahi issued a press release on its website, stating: "Asahi's  
21 management deeply regrets its subsidiaries' possible involvement in any conduct which may be  
22 considered by the competent authorities in violation of the law and, in particular, of antitrust laws."

23 105. Asahi further announced in the press release that some executives would take as  
24 much as a 30 percent pay cut for three months, commencing in January, as a consequence of the  
25 investigation by the EC: "to giv[e] a strong signal to all of Asahi's subsidiaries and stakeholders of  
26 their deep regret and of the importance they attribute to full compliance with antitrust laws. . ."

27 **ALLEGATION OF ANTITRUST INJURY TO PLAINTIFF AND THE CLASS**

28 106. The combination and conspiracy alleged herein had and is having the following

1 effects, among others:

- 2 a. prices charged to Plaintiff and the Class for Flat Glass have been fixed or
- 3 stabilized at higher, artificially derived, non-competitive levels;
- 4 b. Plaintiff and the Class have been deprived of the benefits of free, open and
- 5 unrestricted competition in the market for Flat Glass; and
- 6 c. competition in establishing the prices paid in the United States and worldwide
- 7 for Flat Glass has been unlawfully restrained, suppressed and eliminated.

8 107. By reason of the violations of Section I of the Sherman Act and Section 4 of the  
9 Clayton Act, Plaintiff and the Class have sustained injury to their business or property. The injury  
10 sustained by the Plaintiff and the Class is the payment of supracompetitive prices for Flat Glass as a  
11 result of Defendants' illegal contract, combination, and conspiracy to restrain trade as alleged. This  
12 is an antitrust injury of the type that the antitrust laws were meant to punish and prevent.

13 **FRAUDULENT CONCEALMENT**

14 108. Defendants fraudulently concealed their participation in the conspiracy alleged herein  
15 by, inter alia, engaging in secret meetings and communications in furtherance of the conspiracy, and  
16 by holding themselves out as competitors to the public, to Plaintiff, and to the Class. Because of  
17 such fraudulent concealment, Plaintiff and the Class could not have discovered the existence of this  
18 conspiracy any earlier than its public disclosure.

19 109. By its very nature, Defendants' price-fixing conspiracy was inherently self-  
20 concealing. As alleged above, Defendants had secret discussions about pricing, output, and any fees  
21 or surcharges they would levy on their customers. Defendants agreed not to discuss publicly the  
22 existence or the nature of their agreement.

23 110. As alleged above, despite being insulated from some of the effects of rising energy  
24 costs, Defendants charged their customers these previously agreed upon surcharges and fees without  
25 regard to their actual energy costs. In one example of Defendants attempts to justify their actions, a  
26 CEO of one of the Defendants publicly stated that rising costs of gas and electricity were the reasons  
27 for the price increases and that other "glassmakers have followed our lead."

28 111. Plaintiffs had no reason to disbelieve these statements which on their face appeared to



1 explain reasonably the increase in prices, and added surcharges and fees. Furthermore, information  
2 regarding Defendants true energy costs were not in the public domain and/or involved proprietary  
3 information that was within Defendants' control, such that Plaintiff could not verify their accuracy.  
4 Defendants' purported reasons for the price increases and/or surcharges and fees were materially  
5 false and misleading and were made for the purpose of concealing Defendants' anti-competitive  
6 scheme as alleged herein.

7 112. These affirmative acts of the Defendants, including acts in furtherance of the  
8 conspiracy, were wrongfully concealed and carried out in a manner that precluded detection.

9 113. As a result of Defendants' fraudulent concealment of their conspiracy, the running of  
10 any statute of limitations has been tolled with respect to any claims that Plaintiff has as a result of  
11 the anticompetitive conducted alleged in this Complaint.

## 12 **VIOLATIONS ALLEGED**

### 13 **First Claim For Relief**

#### 14 **(Violation of Section 1 of the Sherman Act and Section 4 of the Clayton Act)**

15 114. Plaintiff incorporates by reference the allegations in the above paragraphs as if  
16 fully set forth herein.

17 115. Defendants and the unnamed co-conspirators entered into and engaged in a contract,  
18 combination or conspiracy in unreasonable restraint of trade in violation of Section 1 of the Sherman  
19 Act and Section 4 of the Clayton Act.

20 116. The contract, combination or conspiracy has resulted in an agreement, understanding  
21 or concerted action between and among Defendants and the co-conspirators in furtherance of which  
22 Defendants fixed, maintained, and standardized prices for Flat Glass. Such contract, combination, or  
23 conspiracy constitutes a per se violation of the federal antitrust laws and is, in any event, an  
24 unreasonable and unlawful restraint of trade.

25 117. Defendants' contract, combination, agreement, understanding or concerted action  
26 with the co-conspirators occurred in or affected interstate and international commerce. Defendants'  
27 unlawful conduct was through mutual understandings or agreements by, between and among  
28 Defendants and the co-conspirators. These other co-conspirators have either acted willingly or, due

1 to coercion, unwillingly in furtherance of the unlawful restraint of trade alleged herein.

2 118. The contract, combination or conspiracy has had the following effects:

- 3 a. prices charged to Plaintiff and the Class for Flat Glass were fixed or stabilized  
4 at higher, artificially derived, non-competitive levels;
- 5 b. Plaintiff and the Class have been deprived of the benefits of free, open and  
6 unrestricted competition in the market for Flat Glass; and
- 7 c. competition in establishing the prices paid, customers of, and territories for  
8 transportation services of Flat Glass has been unlawfully restrained,  
9 suppressed and eliminated.

10 119. As a proximate result of Defendants' unlawful conduct, Plaintiff and the Class have  
11 suffered injury in that they have paid supracompetitive prices for Flat Glass.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff prays for relief as follows:

14 A. That the Court determine that this action may be maintained as a class action under  
15 Rules 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure, that Plaintiff be appointed a class  
16 representative and that Plaintiff's counsel be appointed as counsel for the Class;

17 B. That the unlawful contract, combination and conspiracy alleged in Count I be  
18 adjudged and decreed to be an unreasonable restraint of trade or commerce in violation of Section 1  
19 of the Sherman Act;

20 C. That Plaintiff and the Class recover compensatory damages, as provided by law,  
21 determined to have been sustained as to each of them, and that judgment be entered against  
22 Defendants on behalf of Plaintiff and each and every member of the Class;

23 D. That Plaintiff and the Class recover treble damages, as provided by law; That Plaintiff  
24 and the Class recover their costs of the suit, including attorney's fees, as provided by law;

25 E. That Defendants be enjoined from engaging in the anticompetitive and unlawful acts  
26 described herein; and

27 ///

28 ///

1 F. Such further relief as the Court may deem just and proper.

2 Dated: April , 2008

Respectfully submitted,

3 

4 Pamela E. Woodside

5 FRANCIS O. SCARPULLA (41059)  
6 CRAIG C. CORBITT (83251)  
7 MATTHEW R. SCHULTZ (220641)  
8 PAMELA E. WOODSIDE (226212)  
9 TRAVISS GALLOWAY (234678)  
10 ZELLE, HOFMANN, VOELBEL, MASON  
11 & GETTE LLP  
12 44 Montgomery Street, Suite 3400  
13 San Francisco, CA 94104  
14 Telephone: (415) 693-0700  
15 Facsimile: (415) 693-0770  
16 fscarpulla@zelle.com  
17 ccorbitt@zelle.com

18 *Attorneys for Plaintiffs*

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(a) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury for all issues so triable.

Dated: April , 2008

Respectfully submitted,



Pamela E. Woodside

FRANCIS O. SCARPULLA (41059)  
CRAIG C. CORBITT (83251)  
MATTHEW R. SCHULTZ (220641)  
PAMELA E. WOODSIDE (226212)  
TRAVISS GALLOWAY (234678)  
ZELLE, HOFMANN, VOELBEL, MASON  
& GETTE LLP  
44 Montgomery Street, Suite 3400  
San Francisco, CA 94104  
Telephone: (415) 693-0700  
Facsimile: (415) 693-0770  
fscarpulla@zelle.com  
ccorbitt@zelle.com

*Attorneys for Plaintiffs*

3172835.v4